

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rule making related to terminology

The State Board of Education hereby amends Chapter 31, “Private Instruction and Dual Enrollment,” Chapter 41, “Special Education,” Chapter 56, “Iowa Vocational Rehabilitation Services,” and Chapter 120, “Early Access Integrated System of Early Intervention Services,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 256.7(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2585.

Purpose and Summary

2020 Iowa Acts, House File 2585, made changes to terminology associated with individuals who are deaf or hard of hearing. After consultation with individuals involved in providing service to individuals who are deaf or hard of hearing, as well as individuals who are blind or visually impaired, the Department has adopted the following amendments. These amendments correct outdated terminology. They are not intended to confer any substantive right or conflict with federal law.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 2, 2021, as **ARC 5664C**. A public hearing was held on June 22, 2021, at 9:30 a.m. in the ICN Room, Second Floor, Grimes State Office Building, Des Moines, Iowa, with a videoconference option. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the State Board on August 5, 2021.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s

meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on September 29, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **31.8(2)“a”** as follows:

a. A child’s parent, guardian, or legal or actual custodian who chooses standardized testing for the purpose of fulfilling the assessment requirements of the law shall select an instrument approved by the department. The department shall publish an approved list of standardized testing instruments each year. In the event that the parent, guardian, or legal or actual custodian of a child subject to the annual assessment requirement wishes to have the child take a standardized test not included on the department’s published list, the parent, guardian, or legal or actual custodian shall request permission of the director of the department of education to use a different test. The decision of the director shall be final. Braille or large print editions of any approved test shall be made available for vision-impaired children. Testing norms are available for ~~vision- and hearing-impaired children~~ with vision impairments or children who are deaf or hard of hearing.

ITEM 2. Amend paragraph **41.2(1)“c”** as follows:

c. Other state agencies and schools, including but not limited to the departments of human services and public health and state schools and programs for children ~~with deafness or children with blindness~~ who are deaf or hard of hearing or children who are blind or visually impaired.

ITEM 3. Amend subrule 41.29(2) as follows:

41.29(2) Special rule. For an individual ~~with deafness or blindness~~ who is deaf or hard of hearing or who is blind or visually impaired, or for an individual with no written language, the mode of communication is that normally used by the individual, such as sign language, ~~Braille~~ braille, or oral communication.

ITEM 4. Amend paragraph **41.34(3)“g”** as follows:

g. “*Orientation and mobility services*” means services provided to ~~children~~ children who are blind or visually impaired ~~children~~ by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community, and includes teaching children the following, as appropriate:

(1) to (4) No change.

ITEM 5. Amend subrule 41.50(3) as follows:

41.50(3) Deaf-blindness. “Deaf-blindness” means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children ~~with deafness~~ who are deaf or hard of hearing or children with blindness who are blind or visually impaired.

ITEM 6. Amend subrule 41.50(13) as follows:

41.50(13) Visual impairment. “Visual impairment,” including blindness, means an impairment in vision that, even with correction, adversely affects a child’s educational performance. The term includes both partial sight and blindness. Individuals who have a medically diagnosed expectation of visual deterioration in adolescence or early adulthood may qualify for instruction in ~~Braille~~ braille reading and writing.

ITEM 7. Amend subrule 41.113(1) as follows:

41.113(1) Hearing aids. Each public agency must ensure that hearing aids worn in school by children ~~with hearing impairments, including deafness,~~ who are deaf or hard of hearing are functioning properly.

ITEM 8. Amend paragraph **41.172(1)“a”** as follows:

a. Adopts the National Instructional Materials ~~Accessibility~~ Accessibility Standard (NIMAS) published in the Federal Register on July 19, 2006, (71 Fed. Reg. 41084) for the purposes of providing instructional materials to ~~blind~~ persons who are blind or visually impaired or other persons with print disabilities in a timely manner; and

ITEM 9. Amend rule 281—41.210(256B,34CFR300) as follows:

281—41.210(256B,34CFR300) Purchase of instructional materials.

41.210(1) General. An AEA, an LEA, or any other public agency, when purchasing print instructional materials, must acquire those instructional materials for children who are blind or visually impaired or for other persons with print disabilities in a manner consistent with subrule 41.210(3) and ensure delivery of those materials in a timely manner to those children.

41.210(2) Rights and responsibilities of AEA or LEA. Nothing in this rule relieves the LEA or AEA or any other public agency of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats, but who are not included under the definition of ~~blind~~ persons who are blind or visually impaired or other persons with print disabilities in 41.210(4) “a” or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner, as defined in 41.172(1) “b.”

41.210(3) Preparation and delivery of files. Because the state chooses to coordinate with the NIMAC, an AEA, an LEA, or any other public agency must:

a. As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, enter into a written contract with the publisher of the print instructional materials to:

(1) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or

(2) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

b. Provide instructional materials to ~~blind~~ persons who are blind or visually impaired or other persons with print disabilities in a timely manner.

41.210(4) Definitions. The following definitions apply to this rule and rule 281—41.172(256B,34CFR300), and apply to each state and LEA, regardless of whether the state or LEA chooses to coordinate with the NIMAC:

a. ~~“Blind persons”~~ “Persons who are blind or visually impaired or other persons with print disabilities” means children served under this chapter who may qualify to receive books and other publications produced in specialized formats in accordance with 2 U.S.C. 135a and 36 CFR 701.6. Persons who may receive material in specialized formats include persons who are blind, who have visual disabilities, have certain physical disabilities, or who have reading disabilities resulting from organic dysfunction, as those terms are defined in 36 CFR 701.6(b)(1), and who have obtained certification from a “competent authority,” as defined in 36 CFR 701.6(b)(2).

b. “National Instructional Materials Access Center” or “NIMAC” means the center established pursuant to Section 674(e) of the Act.

c. “National Instructional Materials Accessibility Standard” or “NIMAS” has the meaning given the term in Section 674(e)(3)(B) of the Act.

d. “Print instructional materials” has the meaning given the term in Section 674(e)(3)(C) of the Act.

e. “Specialized formats” has the meaning given the term in Section 674(e)(3)(D) of the Act.

ITEM 10. Amend subrule 41.322(5) as follows:

41.322(5) Use of interpreters or other action, as appropriate. The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team

meeting, including arranging for an interpreter for parents ~~with deafness~~ who are deaf or hard of hearing or whose native language is other than English.

ITEM 11. Amend subparagraph **41.324(1)“b”(3)** as follows:

(3) In the case of a child who is blind or visually impaired, provide for instruction in Braille braille and the use of Braille braille unless the IEP team determines, after an evaluation of the child’s reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the child’s future needs for instruction in Braille braille or the use of Braille braille, that instruction in Braille braille or the use of Braille braille is not appropriate for the child;

ITEM 12. Amend subrule 41.324(6) as follows:

41.324(6) Rules of construction—instruction in Braille braille. For an eligible individual for whom instruction in Braille braille is determined to be appropriate, as provided in 41.324(1) “b”(3), that eligible individual is entitled to instruction in Braille braille reading and writing that is sufficient to enable the individual to communicate with the same level of proficiency as an individual of otherwise comparable ability at the same grade level. Braille Instruction in braille reading and writing instruction may only be provided by a teacher ~~licensed at the appropriate grade level~~ with an endorsement to teach individuals ~~with visual impairments~~ who are blind or visually impaired.

ITEM 13. Amend subrule **41.402(3)**, definition of “Audiologist,” as follows:

“*Audiologist*” applies principles, methods and procedures for analysis of hearing functioning in order to plan, counsel, coordinate and provide intervention strategies and services for individuals ~~with deafness or hearing impairments~~ who are deaf or hard of hearing.

ITEM 14. Amend subrule 41.403(2), definition of “Vision assistant,” as follows:

“*Vision assistant*” provides materials in the appropriate medium for use by individuals ~~with visual impairment including blindness~~ who are blind or visually impaired and performs other duties as assigned by the supervising teacher of ~~individuals with visual impairments~~ the visually impaired.

ITEM 15. Adopt the following new rule 281—41.1102(256B,34CFR300):

281—41.1102(256B,34CFR300) Rule of construction. Language adopted pursuant to 2020 Iowa Acts, House File 2585, shall be construed in a manner consistent with federal law and shall not be construed to confer any different or greater right or responsibility under this chapter.

ITEM 16. Amend paragraph **56.25(4)“j”** as follows:

j. The availability of interpreter and reader services for appellants not familiar with the English language and those who are deaf or hard of hearing and the availability of transportation or attendant services for those appellants requiring such assistance.

ITEM 17. Amend paragraph **120.13(3)“k”** as follows:

k. Special educators, including teachers of children ~~with hearing impairments (including deafness)~~ who are deaf or hard of hearing and teachers of children with visual impairments (including blindness).

ITEM 18. Amend paragraph **120.602(2)“c”** as follows:

c. As needed, provide for interpreters for persons who are deaf or hard of hearing and other necessary services for council members and participants. The council may use funds under this chapter to pay for those services.

ITEM 19. Adopt the following new rule 281—120.814(34CFR303):

281—120.814(34CFR303) Rule of construction. Language adopted pursuant to 2020 Iowa Acts, House File 2585, shall be construed in a manner consistent with federal law and shall not be construed to confer any different or greater right or responsibility under this chapter.

[Filed 8/5/21, effective 9/29/21]

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 8/25/21.